

ESTTA Tracking number: **ESTTA667368**

Filing date: **04/17/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|------------------------|--|
| Proceeding | 91208141 |
| Party | Plaintiff Goya Foods, Inc. |
| Correspondence Address | STEPHEN L BAKER BAKER AND RANNELLS PA 575 ROUTE 28, SUITE 102 RARITAN, NJ 08869 UNITED STATES officeactions@br-tmlaw.com, s.baker@br-tmlaw.com, r.mcgonigle@br-tmlaw.com, k.hnasko@br-tmlaw.com,jld@br-tmlaw.com |
| Submission | Motion to Amend Pleading/Amended Pleading |
| Filer's Name | John M. Rannells |
| Filer's e-mail | jmr@br-tmlaw.com, k.hnasko@br-tmlaw.com, gowen@owe.com, kel@owe.com |
| Signature | /John Rannells/ |
| Date | 04/17/2015 |
| Attachments | 91208141 Opps motion for leave to amend pleading.pdf(2457006 bytes) 91208141 Decl Rannells w exs 1-3.pdf(3370609 bytes) |

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|---------------------------------|----------------------------|
| -----X | |
| GOYA FOODS, INC. | : Opposition No.: 91208141 |
| | : |
| Opposer, | : |
| v. | : |
| | : Mark: CASERA |
| MARQUEZ BROTHERS INTERNATIONAL, | : Ser. No. 85430918 |
| INC. | : |
| | : |
| Applicant. | : |
| | : |
| -----X | |

Opposer, Goya Foods, Inc. ("Opposer"), hereby moves for leave to amend the Notice of Opposition to add reference to and reliance upon Opposer's common law uses of its CASERA and CASERITA marks in this proceeding.

Reg. No. 2740494 for the mark **CASERA** for “processed vegetables.”

The amendment seeks (1) to more fully describe Opposer's CASERA brand processed vegetables which consist of primarily canned bean products (alone or in a tomato broth) and canned tomato sauce, (2) to add CASERA brand rice which Opposer has sold in commerce since 2007, (3) to add CASERITA brand ham croquettes and tamales both being sold since 1977, and (4) to refer to Opposer's predecessor in interest in the CASERA mark in paragraph 6 and 7 of the Notice of Opposition.

Opposer's testimony period is currently set to open on April 21, 2015. Opposer further moves that the Board suspend proceedings pending resolution of this motion.

Under Rule 15(a) of the Federal Rules of Civil Procedure, the Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so required, unless entry of the proposed amendment would violate settled law, or be prejudicial to the rights of the adverse party. *See, e.g., Polaris Industries v. DC Comics*, 59 USPQ2d 1798 (TTAB 2001). Rule 15(a)(1)(B) Fed.R.Civ.P. In fact, the Board may permit the pleadings to be amended even during trial, and "the court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits." Rule 15(b)(1) Fed.R.Civ.P. To protect the non-movant, the court "may grant a continuance to enable the objecting party to meet the evidence." *Id.*

Courts have even granted motions to amend the pleadings at the final stages of a litigation including during trial, or after a reversal or a remand. For example, in *Senza-Gel Corp., et al. v. Seiffhart, et al.*, 231 USPQ 363 (CAFC 1986), a motion to amend was filed by defendant several months after a jury verdict on issues of patent validity and infringement. The Court granted the motion and the CAFC ruled that "The single most important factor is whether prejudice would result to the nonmovant" [citing 9th Circuit cases]. The CAFC further ruled that:

"Where there is lack of prejudice to the opposing party and the amended complaint is obviously not frivolous, or made as a dilatory maneuver in bad faith, it is an abuse of discretion to deny such a motion." [emphasis added] *Hurn v. Retirement Fund Trust of Plumbing, Heating & Piping Industry*, 648 F.2d 1252, 1254 (9th Cir. 1981), (quoting *Howey v. United States*, 481 F.2d 1187, 1190 (9th Cir. 1973); *Keniston v. Roberts*, 717 F.2d 1295 (9th Cir. 1983). "The mere fact that an amendment is offered late in the case is . . . not enough to bar it; amendments may be offered at trial, or even after reversal and

remand.' " *Howey*, 481 F.2d at 1191 n.3 (quoting 3 J. Moore, *Moore's Federal Practice*, §15.08, 0.835); see also *United States v. Webb*, 655 F.2d 977, 980 (9th Cir. 1981).

The key determinate is whether the proposed amendment would be prejudicial to the rights of the adverse party. Prejudice to respondent is not an issue in this case. The respondent is aware of Opposer's asserted common law uses of its mark (as previously set forth in Opposer's motion for summary judgment) and respondent took discovery of Opposer concerning the same (as discussed below). To the extent the respondent feels it requires further discovery, Opposer has no objection to, and the Board has discretion to reopen the discovery period to allow respondent further discovery on such common law uses of Opposer's marks. *See*, Rule 15(b)(1) Fed.R.Civ.P. and TBMP §507.02(a).¹ *See also, Space Base Inc. v. Stadis Corp.*, 17 USPQ2d 1216, 1217 & n. 1 (TTAB 1990) (opposer's motion to amend its pleading during its testimony period granted in the interests of justice and judicial economy and since any prejudice could be mitigated by reopening discovery solely for applicant).

Respondent is not prejudiced. Opposer previously briefed its common law uses in its motion for summary judgment. Further, respondent took discovery on the issue. Respondent's discovery requests ask for information, documents and admissions concerning Opposer's "CASERA brand products" and Opposer's "CASERITA brand products" in general. Opposer responded to respondent's requests as regards all of its CASERA and CASERITA brand products, and has now served supplemental responses to respondent's first and second set of interrogatories.

The most relevant of respondent's interrogatories pertaining to Opposer's uses of CASERA and CASERITA are:

¹ "Exercise of such discretion to reopen discovery, however, may not be necessary when the proposed additional claim or allegation concerns a subject on which the non-moving party can be expected to have relevant information in hand." TBMP §507.02(a).

INTERROGATORY NO. 2:

Identify with particularity each of the types of goods offered or sold by Opposer using the CASERA mark, including the primary ingredients of each.

INTERROGATORY NO. 3:

Identify the dates of first use in commerce for each of Opposer's CASERA branded products identified in response to Interrogatory Number 2.

INTERROGATORY NO. 4:

Identify with particularity each of the types of goods offered or sold by Opposer using the CASERITA mark, including the primary ingredients of each.

INTERROGATORY NO. 5:

Identify the dates of first use in commerce for each of Opposer's CASERITA branded products identified in response to Interrogatory Number 4.

INTERROGATORY NO. 6:

State all facts regarding the type of purchasers or users of the goods and/or services to which Opposer's CASERA brand goods are directed, including age, income level, sophistication, family size, education and any other factor measured by Opposer.

INTERROGATORY NO. 7:

State all facts regarding the type of purchasers or users of the goods and/or services to which Opposer's CASERITA brand goods are directed, including age, income level, sophistication, family size, education and any other factor measured by Opposer.

INTERROGATORY NO. 9:

Describe the channels of trade through which Opposer's CASERA-branded goods have been sold, marketed or distributed in the United States.

INTERROGATORY NO. 10:

Describe the channels of trade through which Opposer's CASERITA-branded goods have been sold, marketed or distributed in the United States.

INTERROGATORY NO. 22:

State all facts relating to or regarding each incident, if any, of actual confusion between any of Applicant's CASERA or CASERO brand goods and any of Opposer's CASERA or CASERITA brand goods.

INTERROGATORY NO. 23:

For each product identified in Interrogatory No. 2 of Applicant's First Set of Interrogatories, list each State and/or territory of the United States in which such product was being sold as of December 31, 2009.

INTERROGATORY NO. 24:

For each product identified in Interrogatory No. 4 of Applicant's First Set of Interrogatories, list each State and/or territory of the United States in which such product was being sold as of December 31, 2009.

INTERROGATORY NO. 25:

For each product identified in Interrogatory No. 2 of Applicant's First Set of Interrogatories, list each State and/or territory of the United States in which such product is currently being sold.

INTERROGATORY NO. 26:

For each product identified in Interrogatory No. 4 of Applicant's First Set of Interrogatories, list each State and/or territory of the United States in which such product is currently being sold.

INTERROGATORY NO. 29:

For products sold or offered for sale by Opposer in the United States bearing the mark CASERA, identify each print publication (by name and date of publication) and each Media spot in which such products have been advertised in the United States.

INTERROGATORY NO. 30:

For products sold or offered for sale by Opposer in the United States bearing the mark CASERITA, identify each print publication (by name and date of publication) and each Media spot in which such products have been advertised in the United States.

INTERROGATORY NO. 31:

Identify all tradeshow in the United States where products bearing Opposer's CASERA mark (on any goods) have ever been displayed.

INTERROGATORY NO. 32:

Identify all tradeshow in the United States where products bearing Opposer's CASERITA mark (on any goods) have ever been displayed.

INTERROGATORY NO. 33:

Identify all instances of which Opposer is aware in which any of its products bearing the mark CASERA have been sold alongside or in the same retail store as Goya's CASERA and/or CASERO brand products.

INTERROGATORY NO. 34:

Identify all instances of which Opposer is aware in which any of its products bearing the mark CASERITA have been sold alongside or in the same retail store as Goya's CASERA and/or CASERO brand products.

In response to the above interrogatories, Opposer responded as regards all of Opposer's CASERA-branded products and all of Opposer's CASERITA-branded products, namely on behalf of all goods identified in response to interrogatories 2 and 4. Opposer provided a complete list of all such goods, including the goods that are the subject of Opposer's motion for leave to amend, set forth the dates of first use in commerce for each product identified, and otherwise responded. *See* Ex. 1, Decl. Rannells (Opposer's above referenced Responses to Applicant's First and Second sets of Interrogatories and Opposer's above referenced Supplemental responses to both).

The following are the relevant Requests for Admissions that Opposer responded to:

REQUEST FOR ADMISSION NO. 16: Admit that Opposer's CASERA brand products are sold at retail in grocery stores in the United States.

REQUEST FOR ADMISSION NO. 17: Admit that Opposer's CASERITA brand products are sold at retail in grocery stores in the United States.

REQUEST FOR ADMISSION NO. 18: Admit that Opposer is aware of instances in which its CASERA brand products for Class 29 or 30 goods were sold alongside or in the same retail environment as Applicant's CASERA brand products for Class 29 or 30 goods.

REQUEST FOR ADMISSION NO. 19: Admit that Opposer is aware of instances in which its CASERA brand products for Class 29 or 30 goods were sold alongside or in the same retail environment as Applicant's CASERO brand products for Class 29 or 30 goods.

REQUEST FOR ADMISSION NO. 20: Admit that Opposer is aware of instances in which its CASERITA brand products for Class 29 or 30 goods were sold alongside or in the same retail environment as Applicant's CASERA brand products for Class 29 or 30 goods.

REQUEST FOR ADMISSION NO. 21: Admit that Opposer is aware of instances in which its CASERITA brand products for Class 29 or 30 goods were sold alongside or in the same retail environment as Applicant's CASERO brand products for Class 29 or 30 goods.

REQUEST FOR ADMISSION NO. 35: Admit that Opposer is unaware of any actual consumer confusion, mistake, or association between Applicant or its CASERA products and Opposer and its CASERITA products.

REQUEST FOR ADMISSION NO. 36: Admit that Opposer is unaware of any actual consumer confusion, mistake, or association between Applicant or its CASERO products and Opposer and its CASERITA products.

In response to the above Requests to Admit, Opposer responded with regard to all of Opposer's CASERA products and all of Opposer's CASERITA products, namely on behalf of all goods identified in response to interrogatories 2 and 4. *See* Ex. 2, Decl. Rannells (Opposer's above referenced Responses to Applicant's Requests for Admissions).

The following are the relevant Document Requests that Opposer responded to:

REQUEST NO. 2: Each document consulted, and/or which was referred to or used in any way in connection with the preparation of Opposer's Answers to Applicant's First Set of Requests for Admissions or Opposer's Answers to Applicant's First Set of Interrogatories.

REQUEST NO. 3: All documents and things relating or referring to any surveys, polls, studies, and/or consumer testing, whether formal or informal, that Opposer has commenced, completed, commissioned, has access to, or will rely upon regarding the subject of a likelihood of confusion between the Opposed Mark and any of Opposer's CASERA or CASERITA marks.

REQUEST NO. 5: A sample, or a copy if a sample is unavailable, of each item of trademark and/or service mark use (*i.e.*, packaging material, wrapper, label, printed container, sign, poster, bag, *etc.*) of the

designation “CASERA” used or proposed for use in the United States in connection with each of Opposer’s goods for each of the last five years to the present.

REQUEST NO. 6: A sample, or a copy if a sample is unavailable, of each item of trademark and/or service mark use (*i.e.*, packaging material, wrapper, label, printed container, sign, poster, bag, *etc.*) of the designation “CASERITA” used or proposed for use in the United States in connection with each of Opposer’s goods for each of the last five years to the present.

REQUEST NO. 7: Representative documents evidencing the dates of first use in commerce for each of Opposer’s CASERA brand goods.

REQUEST NO. 8: Representative documents evidencing the dates of first use in commerce for each of Opposer’s CASERITA brand goods.

REQUEST NO. 9: Representative documents which evidence, demonstrate, or show the channels of trade through which Opposer promotes or advertises or plans to promote or advertise goods in connection with CASERA.

REQUEST NO. 10: Representative documents which evidence, demonstrate, or show the channels of trade through which Opposer promotes or advertises or plans to promote or advertise goods in connection with CASERITA.

REQUEST NO. 18: All documents evidencing that the goods of Applicant and Opposer are substantially related in part and generally related in part.

REQUEST NO. 23: All documents which refer or relate to, or comment upon any instances of actual or possible confusion, mistake, deception or association of any kind between Applicant or its CASERA or CASERO brand products and Opposer and its CASERA or CASERITA brand products.

REQUEST NO. 24: A copy of each advertisement that has appeared in the United States concerning Opposer’s products bearing the mark CASERA.

REQUEST NO. 25: A copy of each advertisement that has appeared in the United States concerning Opposer’s products bearing the mark CASERITA.

REQUEST NO. 26: Documents sufficient to identify all instances of which Opposer is aware that any of its products bearing the mark CASERA have been sold alongside or in the same retail store as Applicant's CASERA or CASERO brand products.

REQUEST NO. 27: Documents sufficient to identify all instances of which Opposer is aware that any of its products bearing the mark CASERITA have been sold alongside or in the same retail store as Applicant's CASERA or CASERO brand products.

Opposer responded first with advising respondent that documents were available for inspection and copying where kept at mutually convenient dates and times. *See* Ex. 3, Decl. Rannells (Opposer's above referenced Responses to Applicant's first and second Requests for Documents). Opposer has now produced documents directly to respondent.

Accordingly, there is no prejudice to respondent in the Board granting leave to amend.

CONCLUSION

For all of the foregoing reasons, Petitioner's motion for leave to amend its Notice of Opposition to include reference and reliance upon Opposer's common law uses of CASERA and CASERITA should be granted. Appended hereto is a red-line of the proposed amended Notice of Opposition showing the changes to the original, and a clean copy of the same. They are marked as Appendix 1 and Appendix 2 respectively. Opposer requests that the same be entered by the Board.

Respectfully submitted

BAKER AND RANNELLS PA

By: /John M. Rannells/
John M. Rannells
Attorneys for Opposer
626 N. Thompson St.
Raritan, NJ 08869

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION FOR LEAVE TO AMEND THE NOTICE OF OPPOSITION with accompanying Declaration of Rannells (including exhibits 1-3) was sent to the attorneys for Applicant this 17th day of April, 2015 via email (gowen@owe.com) and first class mail, postage prepaid, to the following address:

Gregory Owen
OWEN, WICKERSHAM & ERICKSON, P.C.
455 Market Street, 19th Floor
San Francisco, California 94105

/John M. Rannells/

John M. Rannells

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---------------------------------|--------|--------------------------|
| GOYA FOODS, INC. | -----X | |
| | : | Opposition No.: 91208141 |
| | : | |
| v. Opposer, | : | |
| | : | |
| | : | Mark: CASERA |
| MARQUEZ BROTHERS INTERNATIONAL, | : | Ser. No. 85430918 |
| INC. | : | |
| | : | |
| Applicant. | : | |
| | : | |

**OPPOSER’S MOTION FOR LEAVE TO AMEND THE NOTICE OF
OPPOSITION**

APPENDIX “1”

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

-----X
Goya Foods, Inc.

Opp. No. 91208141

Opposer
v.

Mark: CASERA

MARQUEZ BROTHERS INTERNATIONAL, INC.,

Ser. No.: 85430918

Applicant
-----X

**AMENDED NOTICE OF OPPOSITION
PURSUANT TO 15 U.S.C SECTIONS 1063 AND 1125(c)**

In the matter of trademark Ser. No. **85430918** for the mark CASERA ("Applicant's Mark") for Chorizo, longaniza, deli meats, namely, hams, turkey ("Applicant's Goods") in International Class 029 which was published for opposition in the Official Gazette of July 24, 2012, the time to oppose having been extended, Opposer, Goya Foods Inc., a corporation organized and existing under the laws of the State of Delaware and located and doing business at 100 Seaview Drive, Secaucus, New Jersey 07094, believes that it will be damaged by the registration of the alleged mark shown in Application Serial No. 85506823 and opposes the application under the provisions of 15 U.S.C. §1063 (Trademark Act of 1946, Section 13) and 15 U.S.C. Section 1125(c).

As grounds of opposition, it is alleged that:

1. Opposer is the owner of the marks CASERITA and CASERA, (collectively "Opposer's Marks") as ~~a~~-trademarks applied to croquettes and tamales (CASERITA), and rice and processed vegetables (including a wide variety of canned beans and peas and

canned tomato sauce) (CASERA) ~~respectively~~collectively ("Opposer's Goods), the same being directed to ~~directed to~~ wholesale and retail consumers.

2. Opposer is now and for many years has been trading as and known by the Opposer's Marks identifying Opposer as the source of Opposer's Goods, the same being in part substantially identical to and generally related to Applicant's Goods.

3. Opposer is now and for many years prior to any date which may be claimed by Applicant, engaged in the use of Opposer's Mark on and in association with Opposer's Goods and is the owner of the registrations ~~therefor, including *inter alia*, those~~ identified in paragraph 5 below.

4. Since long prior to any date which may be claimed by Applicant, Opposer has been and is now engaged in the use of Opposer's Marks on and in association with Opposer's goods and services in interstate commerce.

5. Opposer is the owner of, *inter alia*, the following U.S. trademark registrations, which ~~is~~are in good order, and in the name of and owned by Opposer:

| MARK | REGISTRATION NO. | GOODS |
|-----------|------------------|---------------------------------|
| *CASERA | 2740494 | Processed Vegetables (Class 29) |
| *CASERITA | 3040516 | Chicken Croquettes (Class 29) |

*Designates incontestable registration.

6. Opposer's CASERA mark and name has been in continuous, open, and notorious use in the United States from 1979 (by Opposer's predecessor in interest in the mark) and from 1993 (by Opposer) to the present date.

7. Opposer's CASERA mark and name has been continuously and widely advertised and promoted in the United States from 1979 (by Opposer's predecessor in interest in the mark) and from 1993 (by Opposer) to the present.

8. Opposer's CASERITA mark and name has been in continuous, open, and notorious use in the United States from 1972 to the present date.

9. Opposer's CASERITA mark and name has been continuously and widely advertised and promoted in the United States from 1972 to the present.

10. As a result of long use, widespread advertising and promotion, and successful sales, advertising and promotion for over thirty years, Opposer's Marks have become distinctive and well-known and highly regarded throughout the United States, long prior to the date Applicant filed the application in issue and long prior to any date of use that may be claimed by Applicant.

11. As a result of the expenditure by Opposer of substantial sums in establishing, maintaining, and policing Opposer's Marks as symbols of Opposer, its quality products and services, the trade and purchasing public have come to recognize Opposer's Marks as distinctive of Opposer's quality products and services and as indicating the sole source of those products and services.

10. The use by Opposer of the Opposer's Marks for the Opposer's Goods alleged herein is long prior to any date which may be lawfully claimed by Applicant, and Opposer has priority.

11. Applicant's Mark is confusingly similar to Opposer's Marks.

12. Specifically, with regard to Opposer's CASERITA trademark, in the Spanish language, the term "Caserita" carries with it the suffix "-ita" such that it is the diminutive equivalent of Applicant's CASERA Mark.

13. The goods of Applicant and Opposer are substantially related in part and generally related in part, and Applicant's intended use of Applicant's Mark in connection with its goods is without the consent or permission of Opposer.

14. The goods of Applicant and Opposer are generally referred to as Latin or Hispanic type food goods and are often used conjointly.

15. Upon information and belief, Applicant intends to market its goods through the same channels of trade as utilized by Opposer for Opposer's goods.

16. Upon information and belief, Applicant intends to direct market its goods to the same ultimate consumer to whom Opposer directs Opposer's goods.

17. Since Opposer owns Opposer's Marks by virtue of prior use, mistake or deception as to the source of origin of the goods will arise and will injure and damage the Opposer and its goodwill.

18. The registration of Applicant's Mark to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant's Goods are made by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Opposer, all to Opposer's irreparable damage.

19. Opposer believes that it is and will be damaged by registration of the mark applied for by Applicant.

WHEREFORE, Opposer prays that the application for registration of CASERA, Serial No. 85506823, filed on September 23, 2011, be denied and that this Opposition be sustained.

Respectfully submitted for Opposer
Goya Foods, Inc.

By: /s/ ~~Stephen L. Baker~~ John M. Rannells
John M. Rannells

Stephen L. Baker
Ryan A. McGonigle
BAKER and RANNELLS PA
Attorneys for Opposer
575 Route 28

Raritan, NJ 08869

~~November 21, 2012~~ April 17, 2015

(908) 722-5640
Officeactions@br-tmlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Amended Notice of Opposition was forwarded by email and first class postage prepaid mail by depositing the same with the U.S. Postal Service on this ~~21st~~17th -day of ~~November, 2012~~April, 2015 to the attorney for the Applicant at the following address:

~~EMMA MADRID, Esq.
MARQUEZ BROTHERS INTERNATIONAL, INC.
5801 RUE FERRARI
SAN JOSE, CALIFORNIA 95138-1857~~

Gregory N. Owen, Esq.
Owen, Wickersham & Erickson
455 Market Street, Suite 1910
San Francisco, CA 94105

Ryan A. McGonigleJohn M. Rannells

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| -----X | |
| GOYA FOODS, INC. | : Opposition No.: 91208141 |
| | : |
| Opposer, | : |
| v. | : |
| | : Mark: CASERA |
| MARQUEZ BROTHERS INTERNATIONAL, | : Ser. No. 85430918 |
| INC. | : |
| | : |
| Applicant. | : |
| | : |
| -----X | |

APPENDIX “2”

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | |
|---|---|
| <p>-----X Goya Foods, Inc. Opposer v. MARQUEZ BROTHERS INTERNATIONAL, INC., Applicant -----X</p> | <p>Opp. No. 91208141 Mark: CASERA Ser. No.: 85430918</p> |
|---|---|

**AMENDED NOTICE OF OPPOSITION
PURSUANT TO 15 U.S.C SECTIONS 1063 AND 1125(c)**

In the matter of trademark Ser. No. **85430918** for the mark CASERA ("Applicant's Mark") for Chorizo, longaniza, deli meats, namely, hams, turkey ("Applicant's Goods") in International Class 029 which was published for opposition in the Official Gazette of July 24, 2012, the time to oppose having been extended, Opposer, Goya Foods Inc., a corporation organized and existing under the laws of the State of Delaware and located and doing business at 100 Seaview Drive, Secaucus, New Jersey 07094, believes that it will be damaged by the registration of the alleged mark shown in Application Serial No. 85506823 and opposes the application under the provisions of 15 U.S.C. §1063 (Trademark Act of 1946, Section 13) and 15 U.S.C. Section 1125(c).

As grounds of opposition, it is alleged that:

1. Opposer is the owner of the marks CASERITA and CASERA, (collectively "Opposer's Marks") as trademarks applied to croquettes and tamales (CASERITA), and rice and processed vegetables (including a wide variety of canned beans and peas and canned

tomato sauce) (CASERA) collectively ("Opposer's Goods), the same being directed to wholesale and retail consumers.

2. Opposer is now and for many years has been trading as and known by the Opposer's Marks identifying Opposer as the source of Opposer's Goods, the same being in part substantially identical to and generally related to Applicant's Goods.

3. Opposer is now and for many years prior to any date which may be claimed by Applicant, engaged in the use of Opposer's Mark on and in association with Opposer's Goods and is the owner of the registrations identified in paragraph 5 below.

4. Since long prior to any date which may be claimed by Applicant, Opposer has been and is now engaged in the use of Opposer's Marks on and in association with Opposer's goods and services in interstate commerce.

5. Opposer is the owner of, *inter alia*, the following U.S. trademark registrations, which are in good order, and in the name of and owned by Opposer:

| MARK | REGISTRATION NO. | GOODS |
|-----------|------------------|---------------------------------|
| *CASERA | 2740494 | Processed Vegetables (Class 29) |
| *CASERITA | 3040516 | Chicken Croquettes (Class 29) |

*Designates incontestable registration.

6. Opposer's CASERA mark and name has been in continuous, open, and notorious use in the United States from 1979 (by Opposer's predecessor in interest in the mark) and from 1993 (by Opposer) to the present date.

7. Opposer's CASERA mark and name has been continuously and widely advertised and promoted in the United States from 1979 (by Opposer's predecessor in interest in the mark) and from 1993 (by Opposer) to the present.

8. Opposer's CASERITA mark and name has been in continuous, open, and notorious use in the United States from 1972 to the present date.

9. Opposer's CASERITA mark and name has been continuously and widely advertised and promoted in the United States from 1972 to the present.

10. As a result of long use, widespread advertising and promotion, and successful sales, advertising and promotion for over thirty years, Opposer's Marks have become distinctive and well-known and highly regarded throughout the United States, long prior to the date Applicant filed the application in issue and long prior to any date of use that may be claimed by Applicant.

11. As a result of the expenditure by Opposer of substantial sums in establishing, maintaining, and policing Opposer's Marks as symbols of Opposer, its quality products and services, the trade and purchasing public have come to recognize Opposer's Marks as distinctive of Opposer's quality products and services and as indicating the sole source of those products and services.

10. The use by Opposer of the Opposer's Marks for the Opposer's Goods alleged herein is long prior to any date which may be lawfully claimed by Applicant, and Opposer has priority.

11. Applicant's Mark is confusingly similar to Opposer's Marks.

12. Specifically, with regard to Opposer's CASERITA trademark, in the Spanish language, the term "Caserita" carries with it the suffix "-ita" such that it is the diminutive equivalent of Applicant's CASERA Mark.

13. The goods of Applicant and Opposer are substantially related in part and generally related in part, and Applicant's intended use of Applicant's Mark in connection with its goods is without the consent or permission of Opposer.

14. The goods of Applicant and Opposer are generally referred to as Latin or Hispanic type food goods and are often used conjointly.

15. Upon information and belief, Applicant intends to market its goods through the same channels of trade as utilized by Opposer for Opposer's goods.

16. Upon information and belief, Applicant intends to direct market its goods to the same ultimate consumer to whom Opposer directs Opposer's goods.

17. Since Opposer owns Opposer's Marks by virtue of prior use, mistake or deception as to the source of origin of the goods will arise and will injure and damage the Opposer and its goodwill.

18. The registration of Applicant's Mark to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant's Goods are made by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Opposer, all to Opposer's irreparable damage.

19. Opposer believes that it is and will be damaged by registration of the mark applied for by Applicant.

WHEREFORE, Opposer prays that the application for registration of CASERA, Serial No. 85506823, filed on September 23, 2011, be denied and that this Opposition be sustained.

Respectfully submitted for Opposer
Goya Foods, Inc.

By: /s/ John M. Rannells

April 17, 2015

John M. Rannells
Stephen L. Baker
Ryan A. McGonigle
BAKER and RANNELLS PA
Attorneys for Opposer
575 Route 28
Raritan, NJ 08869
(908) 722-5640
Officeactions@br-tmlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Amended Notice of Opposition was forwarded by email and first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 17th day of April, 2015 to the attorney for the Applicant at the following address:

Gregory N. Owen, Esq.
Owen, Wickersham & Erickson
455 Market Street, Suite 1910
San Francisco, CA 94105

John M. Rannells

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---------------------------------|---|--------------------------|
| GOYA FOODS, INC. | X | |
| | : | Opposition No.: 91208141 |
| | : | |
| v. Opposer, | : | |
| | : | |
| | : | Mark: CASERA |
| MARQUEZ BROTHERS INTERNATIONAL, | : | Ser. No. 85430918 |
| INC. | : | |
| | : | |
| Applicant. | : | |
| | : | |

**DECLARATION OF JOHN M. RANNELLS
IN SUPPORT OF OPPOSER'S MOTION FOR LEAVE TO AMEND THE NOTICE OF
OPPOSITION**

JOHN M. RANNELLS, declares and states:

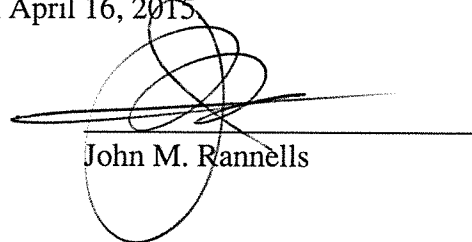
1. I am an attorney at law admitted to practice before the courts of the State of New Jersey. My practice is generally limited to intellectual property with emphasis on trademark law.
2. I am a member of the firm of Baker and Rannells PA and have been with the firm for over twenty-seven years. The firm and its predecessors has had exclusive responsibility for the trademark affairs of Opposer, Goya Foods, Inc. (hereinafter "Goya") since at least as early as 1964.
3. I make this declaration in support of Goya's motion for leave to file an amended Notice of Opposition to add reference to and reliance upon Opposer's common law uses of its CASERA and CASERITA marks in this proceeding.

4. Attached hereto as Exhibit "1" (i.e., exhibits 1(a) – 1(d)) is a true and correct copy of Opposer's Responses to Applicant's First and Second sets of Interrogatories and Opposer's Supplemental responses to both (i.e., to the interrogatories referred to in the motion).

5. Attached hereto as Exhibit 2 is a true and correct copy of Opposer's Responses to Applicant's Requests for Admissions (i.e., to the requests referred to in the motion).

6. Attached hereto as Exhibit 3 (i.e., exhibits 3(a) and 3(b)) is a true and correct copy of Opposer's Responses to Applicant's first and second Requests for Documents (i.e., to the requests referred to in the motion).

I declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct and that this Declaration was executed on April 16, 2015.



John M. Rannells

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Declaration of Rannells in support of Opposer's MOTION FOR LEAVE TO AMEND THE NOTICE OF OPPOSITION with accompanying Declaration of Rannells (including exhibits 1-3) was sent to the attorneys for Applicant this 17th day of April, 2015 via email (gowen@owe.com) and first class mail, postage prepaid, to the following address:

Gregory Owen
OWEN, WICKERSHAM & ERICKSON, P.C.
455 Market Street, 19th Floor
San Francisco, California 94105

/John M. Rannells/

John M. Rannells

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---|------------------------------|---|
| GOYA FOODS, INC. Opposer, v. MARQUEZ BROTHERS INTERNATIONAL, INC. Applicant. | : : : : : : : : : : : : X | Opposition No.: 91208141 Mark: CASERA Ser. No. 85430918 |
|---|------------------------------|---|

**DECLARATION OF JOHN M. RANNELLS
IN SUPPORT OF OPPOSER’S MOTION FOR LEAVE TO AMEND THE NOTICE OF
OPPOSITION**

EXHIBIT 1(a)

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Serial No.: 85/430918
Mark: CASERA

Opposition No. 91208141

OPPOSER'S RESPONSE AND OBJECTIONS TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER

V.

Applicant.

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1 28: No knowledge

2 29: No knowledge

3 30: No knowledge

4 31: No knowledge

5 Req. 33: Opposer's interpretation of the request.

6 Req. 34: Opposer's request for clarification.

7 Req. 35: Opposer's interpretation of the request.

8 Req. 36: Opposer's request for clarification.

9 **INTERROGATORY NO. 2:** Identify with particularity each of the types of goods offered or
10 sold by Opposer using the CASERA mark, including the primary ingredients of each.

11 **RESPONSE:**

| <u>Product</u> | <u>Primary Ingredients</u> |
|--|----------------------------|
| Rice | rice |
| Olives | olives |
| Olive oil | olive oil |
| Tomato sauce (canned) | tomatoes |
| Hot sauce (canned) | cayenne pepper |
| White kidney beans (canned) (in tomato broth) | white kidney beans, tomato |
| Red kidney beans (canned) (in tomato broth) | red kidney beans, tomato |
| Small red kidney beans (canned) | red kidney beans |
| Red kidney beans (dried) | red kidney beans |
| Baby lima beans (dried) | lima beans |
| Large lima beans (dried) | lima beans |
| Roman beans (dried) | roman beans |
| Great Northern beans (dried) | great northern beans |
| Black beans (canned) | black beans |
| Black beans (dried) | black beans |
| Pink beans (canned) (in tomato broth) | pink beans, tomato |

| | | |
|----|----------------------------|---|
| 1 | Pink beans (dried) | pink beans |
| 2 | Garbanzo beans (canned) | garbanzos, tomato |
| 3 | (in tomato broth) | |
| 4 | Garbanzo beans (canned) | garbanzos |
| 5 | Pinto beans (canned) | pinto beans, tomato |
| 6 | (in tomato broth) | |
| 7 | Green peas (canned) | green peas |
| 8 | Sweet peas (canned) | sweet peas |
| 9 | Whole green peas (dried) | green peas |
| 10 | Green split peas (dried) | green split peas |
| 11 | Yellow split peas (dried) | yellow split peas |
| 12 | Whole kernel corn (canned) | corn |
| 13 | Cream style corn (canned) | corn |
| 14 | Cut green beans (canned) | green beans |
| 15 | Green beans (canned) | green beans |
| 16 | Mixed vegetables (canned) | mixed vegetables |
| 17 | Cannellini beans (dried) | cannellini beans |
| 18 | Lentils (dried) | lentils |
| 19 | Gandules (canned) | gandules |
| 20 | Chick peas (dried) | chick peas |
| 21 | Adobo | salt, garlic, oregano, black pepper and various |
| 22 | | flavorings. |

INTERROGATORY NO. 3: Identify the dates of first use in commerce for each of Opposer's CASERA branded products identified in response to Interrogatory Number 2.

RESPONSE:

| <u>Product</u> | <u>First Use in Commerce</u> |
|-----------------------|------------------------------|
| Rice | March 2007 |
| Olives | January 2007 |
| Olive oil | January 2007 |
| Tomato sauce (canned) | December 1993 |

| | | |
|----|---------------------------------|----------------|
| 1 | Hot sauce (canned) | January 2007 |
| 2 | White kidney beans (canned) | November 1993 |
| 3 | (in tomato broth) | |
| 4 | Red kidney beans (canned) | December 1993 |
| 5 | (in tomato broth) | |
| 6 | Small red kidney beans (canned) | September 2013 |
| 7 | Red kidney beans (dried) | June 2007 |
| 8 | Baby lima beans (dried) | June 2007 |
| 9 | Large lima beans (dried) | June 2007 |
| 10 | Roman beans (dried) | June 2007 |
| 11 | Great Northern beans (dried) | June 2007 |
| 12 | Black beans (canned) | December 1993 |
| 13 | Black beans (dried) | June 2007 |
| 14 | Pink beans (canned) | November 1993 |
| 15 | (in tomato broth) | |
| 16 | Pink beans (dried) | June 2007 |
| 17 | Garbanzo beans (canned) | December 1993 |
| 18 | (in tomato broth) | |
| 19 | Garbanzo beans (canned) | March 1999 |
| 20 | Pinto beans (canned) | March 1999 |
| 21 | (in tomato broth) | |
| 22 | Green peas (canned) | December 1993 |
| 23 | Sweet peas | May 2007 |
| 24 | Whole green peas (dried) | June 2007 |
| 25 | Green split peas (dried) | June 2007 |
| 26 | Yellow split peas (dried) | June 2007 |
| 27 | Whole kernel corn (canned) | May 2007 |
| 28 | Cream style corn | December 2008 |
| | Cannellini beans (dried) | June 2007 |
| | Cut green beans (canned) | May 2007 |
| | Green beans (canned) | May 2007 |
| | Mixed vegetables (canned) | May 2007 |
| | Lentils (dried) | June 2007 |

| | |
|---------------------------------|----------------|
| Pigeon Peas (Gandules) (canned) | September 2013 |
| Chick peas (dried) | June 2007 |
| Adobo | January 2007 |

INTERROGATORY NO. 4: Identify with particularity each of the types of goods offered or sold by Opposer using the CASERITA mark, including the primary ingredients of each.

RESPONSE:

| <u>Product</u> | <u>Primary Ingredients</u> |
|--------------------|-----------------------------|
| Chicken croquettes | Chicken, wheat flour, |
| Ham croquettes | Ham, wheat flour |
| Tamales | pork, corn dough, corn husk |

INTERROGATORY NO. 5: Identify the dates of first use in commerce for each of Opposer's CASERITA branded products identified in response to Interrogatory Number 4.

RESPONSE:

| <u>Product</u> | <u>First Use in Commerce</u> |
|-----------------------------|------------------------------|
| Chicken croquettes (frozen) | October 1972 |
| Ham croquettes (frozen) | January 1977 |
| Tamales (frozen) | researching |

INTERROGATORY NO. 6: State all facts regarding the type of purchasers or users of the goods and/or services to which Opposer's CASERA brand goods are directed, including age, income level, sophistication, family size, education and any other factor measured by Opposer.

RESPONSE: Goya has not conducted any specific research on the demographics of purchasers of the goods to which Opposer's CASERA brand goods are directed. Product packaging includes both English and Spanish text. Accordingly, it is assumed that many of the purchasers speak Spanish.

1
2 **INTERROGATORY NO. 7:** State all facts regarding the type of purchasers or users of the
3 goods and/or services to which Opposer's CASERITA brand goods are directed, including age,
4 income level, sophistication, family size, education and any other factor measured by Opposer.

5 **RESPONSE:** Goya has not conducted any specific research on the demographics of
6 purchasers or users of the goods to which Opposer's CASERITA brand goods are directed.

7
8 **INTERROGATORY NO. 8:** Identify the persons most knowledgeable regarding the types of
9 actual purchasers or users identified in Interrogatory Numbers 6 and 7 above.

10 **RESPONSE:**

11 Conrad Colon – Vice President, Goya Foods, Inc. - Contact through counsel.

12 Horacio Cabrera – Vice President, Goya Foods de Puerto Rico – Contact through counsel.

13 **INTERROGATORY NO. 9:** Describe the channels of trade through which Opposer's
14 CASERA-branded goods have been sold, marketed or distributed in the United States.

15 **RESPONSE:** CASERA-branded products are sold, marketed or distributed in the United
16 States in and through supermarkets, grocery stores, bodegas, and the like.

17
18 **INTERROGATORY NO. 10:** Describe the channels of trade through which Opposer's
19 CASERITA-branded goods have been sold, marketed or distributed in the United States.

20 **RESPONSE:** CASERITA-branded products are sold, marketed or distributed in the
21 United States in and through supermarkets, grocery stores, bodegas, and the like.

22 **INTERROGATORY NO. 11:** State all facts relating or referring to the origin, meanings,
23 connotations and/or significance of the term CASERA as used in connection with products sold
24 by Opposer.

25 **RESPONSE:** CASERA is used as a brand name and trademark by Goya on and in
26 connection with the products identified in response to interrogatory no. 2 above.

27 **INTERROGATORY NO. 12:** State all facts relating or referring to the origin, meanings,
28

1 referred to as Latin or Hispanic type of food goods and are often used conjointly.

2 **RESPONSE:** Opposer objects to the request as being overly broad and unduly
3 burdensome to comply with. The facts are numerous and varied. In general, and without
4 intending any limitation, such goods are, in part, advertised and marketed as such. Further,
5 Applicant's products are sold under Applicant's family brand, EL MEXICANO. The parties'
6 respective CASERA branded goods are, for the most part, sold in packaging bearing both
7 English and Spanish text. Regarding "used conjointly," Applicant is referred to Opposer's
8 response to Applicant's interrogatory nos. 17-19.

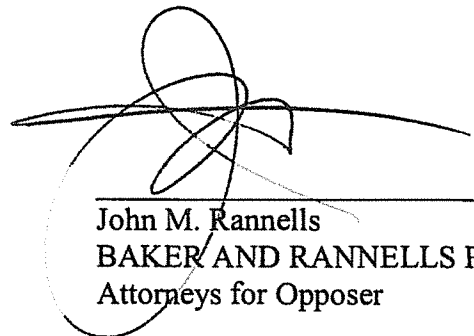
9 **INTERROGATORY NO. 21:** State all facts related or referring to the date and circumstances
10 under which Opposer first learned of the Opposed Mark.

11 **RESPONSE:** Opposer first learned of the Opposed Mark on August 15, 2012 as a result
12 of the Opposed Mark being published in the Official Gazette.

13 **INTERROGATORY NO. 22:** State all facts relating to or regarding each incident, if any, of
14 actual confusion between any of Applicant's CASERA or CASERO brand goods and any of
15 Opposer's CASERA or CASERITA brand goods.

16 **RESPONSE:** Opposer objects to the interrogatory on the basis that the same is vague
17 and ambiguous and asks for information concerning matters not within Opposer's knowledge,
18 but rather solely within Applicant's knowledge. Applicant has not identified what goods it sells
19 in the United States bearing the mark CASERA or CASERO. Please provide a list so that
20 Opposer may properly respond. Subject to and notwithstanding the above objections, Opposer is
21 currently unaware of any incidents of "actual confusion" concerning CASERA or CASERO
22 products of Applicant.

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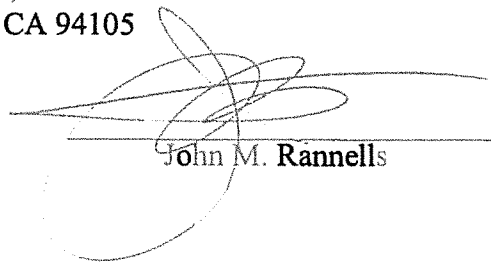
John M. Rannells
BAKER AND RANNELLS PA
Attorneys for Opposer

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Responses and Objections to Applicant's First Set of Interrogatories, in re *Goya Foods, Inc. v. Marquez Brothers International, Inc.*, Opposition No. 91208141, was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 9th day of January, 2015 to Applicant's Attorney at the following address:

Gregory N. Owen, Esq.
Owen, Wickersham & Erickson
455 Market Street, Suite 1910
San Francisco, CA 94105



John M. Rannells

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| GOYA FOODS, INC. | : Opposition No.: 91208141 |
| | : |
| Opposer, | : |
| v. | : |
| | : Mark: CASERA |
| MARQUEZ BROTHERS INTERNATIONAL, | : Ser. No. 85430918 |
| INC. | : |
| | : |
| Applicant. | : |
| | : |
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EXHIBIT 1(b)

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3 In the matter of Trademark Application:

4 Serial No.: 85/430918
5 Mark: CASERA

6 GOYA FOODS, INC.

7 Opposer,

8 v.

9 MARQUEZ BROTHERS
10 INTERNATIONAL, INC.

11 Applicant.

Opposition No. 91208141

OPPOSER'S RESPONSE AND
OBJECTIONS TO APPLICANT'S
SECOND SET OF INTERROGATORIES
TO OPPOSER

12 **OPPOSER'S RESPONSES AND OBJECTIONS**
13 **TO APPLICANT'S SECOND SET OF INTERROGATORIES**

14
15 Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 33 and 34 of the
16 Federal Rules of Civil Procedure, Opposer, Goya Foods, Inc., responds to the Applicant's
17 Second Set of Interrogatories as follows:

18 Preliminary Statement

19 Each of the responses that follow, and every part thereof, are based upon and reflect the
20 knowledge, information or belief of Opposer at the present state of this proceeding.
21 Accordingly, Opposer reserves the right, without assuming the obligation, to supplement or
22 amend these responses to reflect such other knowledge, information or belief which it may
23 hereafter acquire or discover.
24

25 General Objections

16. Opposer objects to Applicant's definition of "Applicant" as over-burdensome, vague, ambiguous. Opposer has no way of knowing who is meant by Marquez's predecessors or successors in interest, or any of its related companies, licensees, subsidiaries and divisions, and including individually or collectively, its partners, directors, employees, agents, attorneys or representatives. Please clarify and provide a list.

17. Opposer objects to Applicant's definition of "identify," "identity," and "identify all facts" as being over broad and unduly burdensome to comply with.

18. Opposer objects to Applicant's Instruction regarding claims of privilege as being over broad and unduly burdensome to comply with.

INTERROGATORIES

INTERROGATORY NO. 23: For each product identified in Interrogatory No. 2 of Applicant's First Set of Interrogatories, list each State and/or territory of the United States in which such product was being sold as of December 31, 2009.

RESPONSE: Opposer distributes and has distributed its CASERA brand products primarily in Puerto Rico, Florida, and Georgia. Opposer is reviewing its records as regards each of the products set forth below for a definitive list in response to the interrogatory. Opposer's research regarding the same is ongoing. Opposer will supplement its response accordingly.

Product

State/Territory as of Dec. 31, 2009

Rice

Tomato sauce (canned)

White kidney beans (canned)
(in tomato broth)

Red kidney beans (canned)
(in tomato broth)

Small red kidney beans (canned)

1 Black beans (canned)
2 Pink beans (canned)
(in tomato broth)
3 Garbanzo beans (canned)
4 (in tomato broth)
5 Garbanzo beans (canned)
6 Black eyed peas (canned)
7 Pinto beans (canned)
(in tomato broth)
8 Pigeon peas (canned)
9 Green peas (canned)

10 **INTERROGATORY NO. 24:** For each product identified in Interrogatory No. 4 of
11 Applicant's First Set of Interrogatories, list each State and/or territory of the United States in
12 which such product was being sold as of December 31, 2009.

13 **RESPONSE:** Opposer distributes and has distributed its CASERITA brand products
14 primarily in Florida and Georgia. Opposer is reviewing its records as regards each of the
15 products set forth below for a definitive list in response to the interrogatory. Opposer's research
16 regarding the same is ongoing. Opposer will supplement its response accordingly.

| <u>Product</u> | <u>State/Territory as of Dec. 31, 2009</u> |
|-----------------------------|--|
| Chicken croquettes (frozen) | |
| Ham croquettes (frozen) | |
| Tamales (frozen) | |

20
21 **INTERROGATORY NO. 25:** For each product identified in Interrogatory No. 2 of
22 Applicant's First Set of Interrogatories, list each State and/or territory of the United States in
23 which such product is currently being sold.

24 **RESPONSE:** Opposer distributes and has distributed its CASERA brand products
25 primarily in Puerto Rico, Florida, and Georgia. Opposer is reviewing its records as regards each
26 of the products set forth below for a definitive list in response to the interrogatory. Opposer's
27 research regarding the same is ongoing. Opposer will supplement its response accordingly.

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| <u>Product</u> | <u>State/Territory Currently Sold</u> |
|--|---------------------------------------|
| Rice | |
| Tomato sauce (canned) | |
| White kidney beans (canned) (in tomato broth) | |
| Red kidney beans (canned) (in tomato broth) | |
| Small red kidney beans (canned) | |
| Black beans (canned) | |
| Pink beans (canned) (in tomato broth) | |
| Garbanzo beans (canned) (in tomato broth) | |
| Garbanzo beans (canned) | |
| Black eyed peas (canned) | |
| Pinto beans (canned) (in tomato broth) | |
| Pigeon peas (canned) | |
| Green peas (canned) | |

INTERROGATORY NO. 26: For each product identified in Interrogatory No. 4 of Applicant's First Set of Interrogatories, list each State and/or territory of the United States in which such product is currently being sold.

RESPONSE: Opposer distributes and has distributed its CASERITA brand products primarily in Florida and Georgia. Opposer is reviewing its records as regards each of the products set forth below for a definitive list in response to the interrogatory. Opposer's research regarding the same is ongoing. Opposer will supplement its response accordingly.

| <u>Product</u> | <u>State/Territory Currently Sold</u> |
|-----------------------------|---------------------------------------|
| Chicken croquettes (frozen) | |

1 Ham croquettes (frozen)

2 Tamales (frozen)

3
4 **INTERROGATORY NO. 27:** Identify all grocery stores by name and address in each State or
5 territory of the United States through which Opposer's products bearing the CASERA mark have
6 been sold to consumers.

7 **RESPONSE:** Opposer objects to the request for "all" grocery stores as being over
8 broad. The request is tantamount to requesting the identity of "all" of Opposer's customers. *See*
9 TBMP §414(3) and cases cited in the associated footnote thereto. Please advise if Applicant is
10 willing to make any concession regarding the breadth of the interrogatory.

11 **INTERROGATORY NO. 28:** Identify all grocery stores by name and address in each State or
12 territory of the United States through which Opposer's products bearing the CASERITA mark
13 have been sold to consumers.

14 **RESPONSE:** Opposer objects to the request for "all" grocery stores as being over
15 broad. The request is tantamount to requesting the identity of "all" of Opposer's customers. *See*
16 TBMP §414(3) and cases cited in the associated footnote thereto. Please advise if Applicant is
17 willing to make any concession regarding the breadth of the interrogatory.

18 **INTERROGATORY NO. 29:** For products sold or offered for sale by Opposer in the United
19 States bearing the mark CASERA, identify each print publication (by name and date of
20 publication) and each Media spot in which such products have been advertised in the United
21 States.

22 **RESPONSE:** Opposer advertises and promotes its CASERA products through its
23 website, caserapr.com. It also advertises on television (e.g., Channel 24 in Puerto Rico in the
24 program "La Cocina de Lis y Bizcocho"), in magazines (e.g., "Caras Puerto Rico," "TV y
25 Novelas"). Retailers also advertise/promote CASERA products through newspapers, circulars
26 and the like. Opposer's investigation is ongoing and its response hereto will be supplemented
27 shortly.

1
2 **INTERROGATORY NO. 30:** For products sold or offered for sale by Opposer in the United
3 States bearing the mark CASERITA, identify each print publication (by name and date of
4 publication) and each Media spot in which such products have been advertised in the United
5 States.

6 **RESPONSE:** Opposer's investigation is ongoing and its response hereto will be
7 supplemented shortly.

8 **INTERROGATORY NO. 31:** Identify all tradeshow in the United States where products
9 bearing Opposer's CASERA mark (on any goods) have ever been displayed.

10 **RESPONSE:**

11 1. MIDA Tradeshow. Each year from 1994 – 2014. Location: Hotel El Conquistador Golf
12 Resort and Casino – Fajardo, Puerto Rico.

13 2. Chamber of Commerce Convention

14 Opposer's investigation is ongoing and its response hereto will be supplemented shortly.

15 **INTERROGATORY NO. 32:** Identify all tradeshow in the United States where products
16 bearing Opposer's CASERITA mark (on any goods) have ever been displayed.

17 **RESPONSE:** Opposer's investigation is ongoing and its response hereto will be
18 supplemented shortly.

19 **INTERROGATORY NO. 33:** Identify all instances of which Opposer is aware in which any of
20 its products bearing the mark CASERA have been sold alongside or in the same retail store as
21 Goya's CASERA and/or CASERO brand products.

22 **RESPONSE:** To Opposer's knowledge, none.

23 **INTERROGATORY NO. 34:** Identify all instances of which Opposer is aware in which any of
24 its products bearing the mark CASERITA have been sold alongside or in the same retail store as
25 Goya's CASERA and/or CASERO brand products.

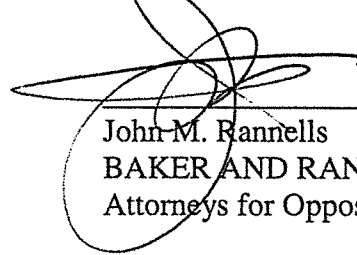
26 **RESPONSE:** To Opposer's knowledge, none.

1 Dated: January 28, 2015

Respectfully submitted,

2 Baker and Rannells PA

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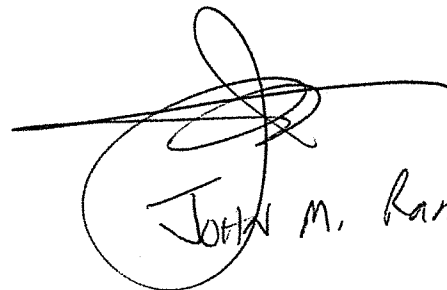


John M. Rannells
BAKER AND RANNELLS PA
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Responses and Objections to Applicant's Second Set of Interrogatories, in re *Goya Foods, Inc. v. Marquez Brothers International, Inc.*, Opposition No. 91208141, was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 28th day of January, 2015 to Applicant's Attorney at the following address:

Gregory N. Owen, Esq.
Owen, Wickersham & Erickson
455 Market Street, Suite 1910
San Francisco, CA 94105



John M. Rannells

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
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| -----X | | |
| GOYA FOODS, INC. | : | Opposition No.: 91208141 |
| | : | |
| Opposer, | : | |
| v. | : | |
| | : | Mark: CASERA |
| MARQUEZ BROTHERS INTERNATIONAL, | : | Ser. No. 85430918 |
| INC. | : | |
| | : | |
| Applicant. | : | |
| | : | |
| -----X | | |

**DECLARATION OF JOHN M. RANNELLS
IN SUPPORT OF OPPOSER'S MOTION FOR LEAVE TO AMEND THE NOTICE OF
OPPOSITION**

EXHIBIT 1(c)

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Serial No.: 85/430918
Mark: CASERA

Applicant.

OPPOSER'S RESPONSE AND OBJECTIONS TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER

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Preliminary Statement

General Objections

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28: No knowledge
29: No knowledge
30: No knowledge
31: No knowledge
Req. 33: Opposer's interpretation of the request.
Req. 34: Opposer's request for clarification.
Req. 35: Opposer's interpretation of the request.
Req. 36: Opposer's request for clarification.

INTERROGATORY NO. 2: Identify with particularity each of the types of goods offered or sold by Opposer using the CASERA mark, including the primary ingredients of each.

RESPONSE:

| <u>Product</u> | <u>Primary Ingredients</u> |
|--|----------------------------|
| Rice | rice |
| Olives | olives |
| Olive oil | olive oil |
| Tomato sauce (canned) | tomatoes |
| Hot sauce (canned) | cayenne pepper |
| White kidney beans (canned) (in tomato broth) | white kidney beans, tomato |
| Red kidney beans (canned) (in tomato broth) | red kidney beans, tomato |
| Small red kidney beans (canned) | red kidney beans |
| Red kidney beans (dried) | red kidney beans |
| Baby lima beans (dried) | lima beans |
| Large lima beans (dried) | lima beans |
| Roman beans (dried) | roman beans |
| Great Northern beans (dried) | great northern beans |
| Black beans (canned) | black beans |
| Black beans (dried) | black beans |
| Pink beans (canned) (in tomato broth) | pink beans, tomato |

| | | |
|----|----------------------------|---|
| 1 | Pink beans (dried) | pink beans |
| 2 | Garbanzo beans (canned) | garbanzos, tomato |
| 3 | (in tomato broth) | |
| 4 | Garbanzo beans (canned) | garbanzos |
| 5 | Pinto beans (canned) | pinto beans, tomato |
| 6 | (in tomato broth) | |
| 7 | Green peas (canned) | green peas |
| 8 | Sweet peas (canned) | sweet peas |
| 9 | Whole green peas (dried) | green peas |
| 10 | Green split peas (dried) | green split peas |
| 11 | Yellow split peas (dried) | yellow split peas |
| 12 | Whole kernel corn (canned) | corn |
| 13 | Cream style corn (canned) | corn |
| 14 | Cut green beans (canned) | green beans |
| 15 | Green beans (canned) | green beans |
| 16 | Mixed vegetables (canned) | mixed vegetables |
| 17 | Cannellini beans (dried) | cannellini beans |
| 18 | Lentils (dried) | lentils |
| 19 | Gandules (canned) | gandules |
| 20 | Chick peas (dried) | chick peas |
| 21 | Adobo | salt, garlic, oregano, black pepper and various flavorings. |

22 **INTERROGATORY NO. 3:** Identify the dates of first use in commerce for each of Opposer's
23 CASERA branded products identified in response to Interrogatory Number 2.

24 **RESPONSE:**

| | | |
|----|-----------------------|------------------------------|
| 25 | <u>Product</u> | <u>First Use in Commerce</u> |
| 26 | Rice | March 2007 |
| 27 | Olives | January 2007 |
| 28 | Olive oil | January 2007 |
| | Tomato sauce (canned) | December 1993 |

| | | |
|----|---------------------------------|----------------|
| 1 | Hot sauce (canned) | January 2007 |
| 2 | White kidney beans (canned) | November 1993 |
| 3 | (in tomato broth) | |
| 4 | Red kidney beans (canned) | December 1993 |
| 5 | (in tomato broth) | |
| 6 | Small red kidney beans (canned) | September 2013 |
| 7 | Red kidney beans (dried) | June 2007 |
| 8 | Baby lima beans (dried) | June 2007 |
| 9 | Large lima beans (dried) | June 2007 |
| 10 | Roman beans (dried) | June 2007 |
| 11 | Great Northern beans (dried) | June 2007 |
| 12 | Black beans (canned) | December 1993 |
| 13 | Black beans (dried) | June 2007 |
| 14 | Pink beans (canned) | November 1993 |
| 15 | (in tomato broth) | |
| 16 | Pink beans (dried) | June 2007 |
| 17 | Garbanzo beans (canned) | December 1993 |
| 18 | (in tomato broth) | |
| 19 | Garbanzo beans (canned) | March 1999 |
| 20 | Pinto beans (canned) | March 1999 |
| 21 | (in tomato broth) | |
| 22 | Green peas (canned) | December 1993 |
| 23 | Sweet peas | May 2007 |
| 24 | Whole green peas (dried) | June 2007 |
| 25 | Green split peas (dried) | June 2007 |
| 26 | Yellow split peas (dried) | June 2007 |
| 27 | Whole kernel corn (canned) | May 2007 |
| 28 | Cream style corn | December 2008 |
| | Cannellini beans (dried) | June 2007 |
| | Cut green beans (canned) | May 2007 |
| | Green beans (canned) | May 2007 |
| | Mixed vegetables (canned) | May 2007 |
| | Lentils (dried) | June 2007 |

1 Pigeon Peas (Gandules) (canned) September 2013

2 Chick peas (dried) June 2007

3 Adobo January 2007

4
5 **INTERROGATORY NO. 4:** Identify with particularity each of the types of goods offered or
6 sold by Opposer using the CASERITA mark, including the primary ingredients of each.

7 **RESPONSE:**

8 Product

Primary Ingredients

9 Chicken croquettes

Chicken, wheat flour,

10 Ham croquettes

Ham, wheat flour

11 Tamales

pork, corn dough, corn husk

12
13 **INTERROGATORY NO. 5:** Identify the dates of first use in commerce for each of Opposer's
14 CASERITA branded products identified in response to Interrogatory Number 4.

15 **AMENDED RESPONSE:**

16 Product

First Use in Commerce

17 Chicken croquettes (frozen)

October 1972

18 Ham croquettes (frozen)

October 1972

19 Tamales (frozen)

October 1972

20
21 **INTERROGATORY NO. 6:** State all facts regarding the type of purchasers or users of the
22 goods and/or services to which Opposer's CASERA brand goods are directed, including age,
income level, sophistication, family size, education and any other factor measured by Opposer.

23 **RESPONSE:** Goya has not conducted any specific research on the demographics of
24 purchasers of the goods to which Opposer's CASERA brand goods are directed. Product
25 packaging includes both English and Spanish text. Accordingly, it is assumed that many of the
26 purchasers speak Spanish.

1
2 **INTERROGATORY NO. 7:** State all facts regarding the type of purchasers or users of the
3 goods and/or services to which Opposer's CASERITA brand goods are directed, including age,
4 income level, sophistication, family size, education and any other factor measured by Opposer.

5 **RESPONSE:** Goya has not conducted any specific research on the demographics of
6 purchasers or users of the goods to which Opposer's CASERITA brand goods are directed.

7
8 **INTERROGATORY NO. 8:** Identify the persons most knowledgeable regarding the types of
9 actual purchasers or users identified in Interrogatory Numbers 6 and 7 above.

10 **RESPONSE:**

11 Conrad Colon – Vice President, Goya Foods, Inc. - Contact through counsel.

12 Horacio Cabrera – Vice President, Goya Foods de Puerto Rico – Contact through counsel.

13 **INTERROGATORY NO. 9:** Describe the channels of trade through which Opposer's
14 CASERA-branded goods have been sold, marketed or distributed in the United States.

15 **RESPONSE:** CASERA-branded products are sold, marketed or distributed in the United
16 States in and through supermarkets, grocery stores, bodegas, and the like.

17
18 **INTERROGATORY NO. 10:** Describe the channels of trade through which Opposer's
19 CASERITA-branded goods have been sold, marketed or distributed in the United States.

20 **RESPONSE:** CASERITA-branded products are sold, marketed or distributed in the
21 United States in and through supermarkets, grocery stores, bodegas, and the like.

22 **INTERROGATORY NO. 11:** State all facts relating or referring to the origin, meanings,
23 connotations and/or significance of the term CASERA as used in connection with products sold
24 by Opposer.

25 **RESPONSE:** CASERA is used as a brand name and trademark by Goya on and in
26 connection with the products identified in response to interrogatory no. 2 above.

27 **INTERROGATORY NO. 12:** State all facts relating or referring to the origin, meanings,
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2 **INTERROGATORY NO. 20:** State all facts that Opposer contends supports Opposer's
3 allegations in the Notice of Opposition that the goods of Applicant and Opposer are generally
4 referred to as Latin or Hispanic type of food goods and are often used conjointly.

5 **RESPONSE:** Opposer objects to the request as being overly broad and unduly
6 burdensome to comply with. The facts are numerous and varied. In general, and without
7 intending any limitation, such goods are, in part, advertised and marketed as such. Further,
8 Applicant's products are sold under Applicant's family brand, EL MEXICANO. The parties'
9 respective CASERA branded goods are, for the most part, sold in packaging bearing both
10 English and Spanish text. Regarding "used conjointly," Applicant is referred to Opposer's
11 response to Applicant's interrogatory nos. 17-19.

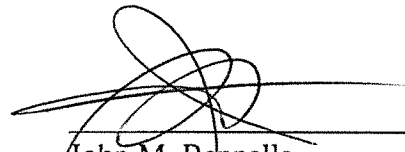
12 **INTERROGATORY NO. 21:** State all facts related or referring to the date and circumstances
13 under which Opposer first learned of the Opposed Mark.

14 **RESPONSE:** Opposer first learned of the Opposed Mark on August 15, 2012 as a result
15 of the Opposed Mark being published in the Official Gazette.

16 **INTERROGATORY NO. 22:** State all facts relating to or regarding each incident, if any, of
17 actual confusion between any of Applicant's CASERA or CASERO brand goods and any of
18 Opposer's CASERA or CASERITA brand goods.


19 **RESPONSE:** Opposer objects to the interrogatory on the basis that the same is vague
20 and ambiguous and asks for information concerning matters not within Opposer's knowledge,
21 but rather solely within Applicant's knowledge. Applicant has not identified what goods it sells
22 in the United States bearing the mark CASERA or CASERO. Please provide a list so that
23 Opposer may properly respond. Subject to and notwithstanding the above objections, Opposer is
24 currently unaware of any incidents of "actual confusion" concerning CASERA or CASERO
25 products of Applicant.
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1 AS TO OBJECTIONS:

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John M. Rannells
BAKER AND RANNELLS PA
Attorneys for Opposer

1 AS TO RESPONSES:

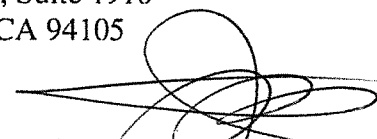
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I, Conrad Colon, Vice President of Goya Foods, Inc., have reviewed the responses set forth above and declare this 17 day of April, 2015, that they are true and correct to the best of my knowledge and my review of corporate records.


Conrad Colon

1 CERTIFICATE OF SERVICE

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I hereby certify that a true and correct copy of Opposer's Responses and Objections to Applicant's First Set of Interrogatories, in re *Goya Foods, Inc. v. Marquez Brothers International, Inc.*, Opposition No. 91208141, was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 17th day of April, 2015 to Applicant's Attorney at the following address:

Gregory N. Owen, Esq.
Owen, Wickersham & Erickson
455 Market Street, Suite 1910
San Francisco, CA 94105


John M. Rannells

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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| GOYA FOODS, INC. | : | Opposition No.: 91208141 |
| | : | |
| Opposer, | : | |
| v. | : | |
| | : | Mark: CASERA |
| MARQUEZ BROTHERS INTERNATIONAL, | : | Ser. No. 85430918 |
| INC. | : | |
| | : | |
| Applicant. | : | |
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**DECLARATION OF JOHN M. RANNELLS
IN SUPPORT OF OPPOSER'S MOTION FOR LEAVE TO AMEND THE NOTICE OF
OPPOSITION**

EXHIBIT 1(d)

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Serial No.: 85/430918
Mark: CASERA

Opposition No. 91208141

OPPOSER'S RESPONSE AND OBJECTIONS TO APPLICANT'S SECOND SET OF INTERROGATORIES TO OPPOSER

V.

Applicant.

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16. Opposer objects to Applicant's definition of "Applicant" as over-burdensome, vague, ambiguous. Opposer has no way of knowing who is meant by Marquez's predecessors or successors in interest, or any of its related companies, licensees, subsidiaries and divisions, and including individually or collectively, its partners, directors, employees, agents, attorneys or representatives. Please clarify and provide a list.

17. Opposer objects to Applicant's definition of "identify," "identity," and "identify all facts" as being over broad and unduly burdensome to comply with.

18. Opposer objects to Applicant's Instruction regarding claims of privilege as being over broad and unduly burdensome to comply with.

INTERROGATORIES

INTERROGATORY NO. 23: For each product identified in Interrogatory No. 2 of Applicant's First Set of Interrogatories, list each State and/or territory of the United States in which such product was being sold as of December 31, 2009.

RESPONSE: Opposer distributes and has distributed its CASERA brand products primarily in Puerto Rico, Florida, and Georgia although actual distribution and sales by third parties are likely wider in scope.

| <u>Product</u> | <u>State/Territory as of Dec. 31, 2009</u> |
|--|--|
| Rice | Puerto Rico |
| Tomato sauce (canned) | Florida, Puerto Rico |
| White kidney beans (canned) (in tomato broth) | Florida, Georgia, Puerto Rico |
| Red kidney beans (canned) (in tomato broth) | Florida, Georgia, Puerto Rico |
| Black beans (canned) | Florida, Georgia, Puerto Rico |

| | |
|--|-------------------------------|
| Pink beans (canned) (in tomato broth) | Florida, Georgia, Puerto Rico |
| Garbanzo beans (canned) (in tomato broth) | Florida, Georgia, Puerto Rico |
| Garbanzo beans (canned) | Florida, Georgia, Puerto Rico |
| Black eyed peas (canned) (frijoles) | Florida, Georgia, Puerto Rico |
| Pinto beans (canned) (in tomato broth) | Florida, Georgia, Puerto Rico |
| Pigeon peas (canned) (gandules) | Florida, Puerto Rico |
| Green peas (canned) (guisantes) | Florida, Georgia, Puerto Rico |

INTERROGATORY NO. 24: For each product identified in Interrogatory No. 4 of Applicant's First Set of Interrogatories, list each State and/or territory of the United States in which such product was being sold as of December 31, 2009.

RESPONSE: Opposer distributes and has distributed its CASERITA brand products primarily in Florida and California. although actual distribution and sales by third parties are likely wider in scope.

| <u>Product</u> | <u>State/Territory as of Dec. 31, 2009</u> |
|-----------------------------|--|
| Chicken croquettes (frozen) | Florida |
| Ham croquettes (frozen) | Florida, California |
| Tamales (frozen) | Florida, California |

INTERROGATORY NO. 25: For each product identified in Interrogatory No. 2 of Applicant's First Set of Interrogatories, list each State and/or territory of the United States in which such product is currently being sold.

RESPONSE: Opposer distributes and has distributed its CASERA brand products primarily in Puerto Rico, Florida, and Georgia although actual distribution and sales by third

parties are likely wider in scope.

| <u>Product</u> | <u>State/Territory Currently Sold</u> |
|--|---------------------------------------|
| Rice | Puerto Rico |
| Tomato sauce (canned) | Puerto Rico, Georgia |
| White kidney beans (canned) (in tomato broth) | Puerto Rico, Florida, Georgia |
| Red kidney beans (canned) (in tomato broth) | Puerto Rico, Florida, Georgia |
| Small red kidney beans (canned) | Puerto Rico |
| Black beans (canned) | Puerto Rico, Florida, Georgia |
| Pink beans (canned) (in tomato broth) | Puerto Rico, Florida, Georgia |
| Garbanzo beans (canned) (in tomato broth) | Puerto Rico, Florida |
| Garbanzo beans (canned) | Puerto Rico, Florida, Georgia |
| Black eyed peas (canned) (frijoles) | Puerto Rico, Florida, Georgia |
| Pinto beans (canned) (in tomato broth) | Puerto Rico, Florida, Georgia |
| Pigeon peas (canned) (gandules) | Puerto Rico, Florida |
| Green peas (canned) (guisantes) | Puerto Rico, Florida, Georgia |

INTERROGATORY NO. 26: For each product identified in Interrogatory No. 4 of Applicant's First Set of Interrogatories, list each State and/or territory of the United States in which such product is currently being sold.

RESPONSE: Opposer distributes and has distributed its CASERITA brand products primarily in Florida and California. although actual distribution and sales by third parties are likely wider in scope.

| <u>Product</u> | <u>State/Territory Currently Sold</u> |
|-----------------------------|---------------------------------------|
| Chicken croquettes (frozen) | Florida |
| Ham croquettes (frozen) | Florida, California |
| Tamales (frozen) | Florida, California |

INTERROGATORY NO. 27: Identify all grocery stores by name and address in each State or territory of the United States through which Opposer's products bearing the CASERA mark have been sold to consumers.

RESPONSE: Opposer objects to the request for "all" grocery stores as being over broad. The request is tantamount to requesting the identity of "all" of Opposer's customers. *See* TBMP §414(3) and cases cited in the associated footnote thereto. Please advise if Applicant is willing to make any concession regarding the breadth of the interrogatory.

INTERROGATORY NO. 28: Identify all grocery stores by name and address in each State or territory of the United States through which Opposer's products bearing the CASERITA mark have been sold to consumers.

RESPONSE: Opposer objects to the request for "all" grocery stores as being over broad. The request is tantamount to requesting the identity of "all" of Opposer's customers. *See* TBMP §414(3) and cases cited in the associated footnote thereto. Please advise if Applicant is willing to make any concession regarding the breadth of the interrogatory.

INTERROGATORY NO. 29: For products sold or offered for sale by Opposer in the United States bearing the mark CASERA, identify each print publication (by name and date of publication) and each Media spot in which such products have been advertised in the United States.

RESPONSE: Opposer advertises and promotes its CASERA products through its website, caserapr.com. It also advertises on billboards, on television (e.g., Channel 24 in Puerto Rico in the program "La Cocina de Lis y Bizcocho"), and in magazines (e.g., "Women's Health," "Caras Puerto Rico," "TV y Novelas" "Vanidades," "Buen Hogar," "Buena Vida," "TV

1 Aquí,” “El Nuevo Dia,” and “Metro Puerto Rico”) Copies of advertisements and associated
2 invoices are served herewith pursuant to Rule 33(d) F.R.Civ.P see bates numbers 367-489 and
3 539-662. Retailers also advertise/promote CASERA products through newspapers, circulars and
4 the like (Opposer does not maintain copies of such documents). Opposer also promotes
5 CASERA products at the MIDA Tradeshow (each year from 1994 – 2014) and the Chamber of
6 Commerce Convention.

7 **INTERROGATORY NO. 30:** For products sold or offered for sale by Opposer in the United
8 States bearing the mark CASERITA, identify each print publication (by name and date of
9 publication) and each Media spot in which such products have been advertised in the United
10 States.

11 **RESPONSE:** Retailers advertise/promote CASERITA products through newspapers,
12 circulars and the like (Opposer does not maintain copies of such documents or specific records
13 concerning the same).

14 **INTERROGATORY NO. 31:** Identify all tradeshow in the United States where products
15 bearing Opposer’s CASERA mark (on any goods) have ever been displayed.

16 **RESPONSE:**

- 17 1. MIDA Tradeshow. Each year from 1994 – 2014. Location: Hotel El Conquistador Golf
18 Resort and Casino – Fajardo, Puerto Rico.
19 2. Chamber of Commerce Convention, Puerto Rico.

20 **INTERROGATORY NO. 32:** Identify all tradeshow in the United States where products
21 bearing Opposer’s CASERITA mark (on any goods) have ever been displayed.

22 **RESPONSE:** None.

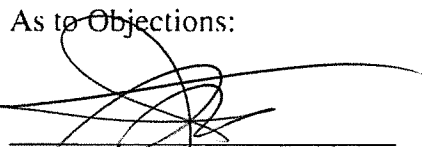
23 **INTERROGATORY NO. 33:** Identify all instances of which Opposer is aware in which any of
24 its products bearing the mark CASERA have been sold alongside or in the same retail store as
25 Goya’s CASERA and/or CASERO brand products.

26 **RESPONSE:** To Opposer’s knowledge, none.

1 **INTERROGATORY NO. 34:** Identify all instances of which Opposer is aware in which any of
2 its products bearing the mark CASERITA have been sold alongside or in the same retail store as
3 Goya's CASERA and/or CASERO brand products.


4 **RESPONSE:** To Opposer's knowledge, none.

5 As to Objections:

6 
7 _____
8 John M. Rannells
9 BAKER AND RANNELLS PA
10 Attorneys for Opposer

11 As to Responses:

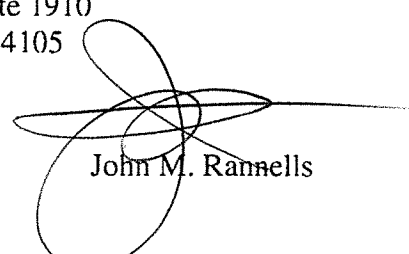
12 I, Conrad Colon, Vice President of Goya Foods, Inc., have reviewed the responses set
13 forth above and declare this 17 day of April, 2015, that they are true and correct to the best of
14 my knowledge and my review of company records.

15 
16 _____
17 Conrad Colon

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that a true and correct copy of Opposer's Responses and Objections to
20 Applicant's Second Set of Interrogatories, in re *Goya Foods, Inc. v. Marquez Brothers*
21 *International, Inc.*, Opposition No. 91208141, was forwarded by first class postage prepaid mail
22 by depositing the same with the U.S. Postal Service on this 17~~th~~ day of April, 2015 to
23 Applicant's Attorney at the following address:

24 Gregory N. Owen, Esq.
25 Owen, Wickersham & Erickson
26 455 Market Street, Suite 1910
27 San Francisco, CA 94105

28 
John M. Rannells

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|---------------------------------|----------------------------|
| -----X | |
| GOYA FOODS, INC. | : Opposition No.: 91208141 |
| | : |
| Opposer, | : |
| v. | : |
| | : Mark: CASERA |
| MARQUEZ BROTHERS INTERNATIONAL, | : Ser. No. 85430918 |
| INC. | : |
| | : |
| Applicant. | : |
| | : |
| -----X | |

EXHIBIT “2”

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Serial No.: 85/430918
Mark: CASERA

Opposition No. 91208141

OPPOSER'S RESPONSES AND OBJECTIONS TO APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSIONS TO OPPOSER

v.

Applicant.

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2 **REQUEST FOR ADMISSION NO. 12:** Admit that Opposer has never used the mark
3 CASERA on deli meats sold in the United States.

4 **RESPONSE:** Admitted.

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6 **REQUEST FOR ADMISSION NO. 13:** Admit that Opposer has never used the mark
7 CASERITA on chorizo sold in the United States.

8 **RESPONSE:** Admitted.

9 **REQUEST FOR ADMISSION NO. 14:** Admit that Opposer has never used the mark
10 CASERITA on longaniza sold in the United States.

11 **RESPONSE:** Admitted.

12 **REQUEST FOR ADMISSION NO. 15:** Admit that Opposer has never used the mark
13 CASERITA on deli meats sold in the United States.

14 **RESPONSE:** Admitted.

15
16 **REQUEST FOR ADMISSION NO. 16:** Admit that Opposer's CASERA brand products are
17 sold at retail in grocery stores in the United States.

18 **RESPONSE:** Admitted.

19 **REQUEST FOR ADMISSION NO. 17:** Admit that Opposer's CASERITA brand products are
20 sold at retail in grocery stores in the United States.

21 **RESPONSE:** Admitted.

22
23 **REQUEST FOR ADMISSION NO. 18:** Admit that Opposer is aware of instances in which its
24 CASERA brand products for Class 29 or 30 goods were sold alongside or in the same retail
25 environment as Applicant's CASERA brand products for Class 29 or 30 goods.

26 **RESPONSE:** Opposer objects to the request as being vague and ambiguous in its use of
27 the term "same retail environment." Please clarify. As regards "sold alongside," and based upon
28 current knowledge, Denied.

1
2 **REQUEST FOR ADMISSION NO. 19:** Admit that Opposer is aware of instances in which its
3 CASERA brand products for Class 29 or 30 goods were sold alongside or in the same retail
4 environment as Applicant's CASERO brand products for Class 29 or 30 goods.

5 **RESPONSE:** Opposer objects to the request as being vague and ambiguous in its use of
6 the term "same retail environment." Please clarify. As regards "sold alongside," and based upon
7 current knowledge, Denied.

8 **REQUEST FOR ADMISSION NO. 20:** Admit that Opposer is aware of instances in which its
9 CASERITA brand products for Class 29 or 30 goods were sold alongside or in the same retail
10 environment as Applicant's CASERA brand products for Class 29 or 30 goods.

11 **RESPONSE:** Opposer objects to the request as being vague and ambiguous in its use of
12 the term "same retail environment." Please clarify. As regards "sold alongside," and based upon
13 current knowledge, Denied.

14 **REQUEST FOR ADMISSION NO. 21:** Admit that Opposer is aware of instances in which its
15 CASERITA brand products for Class 29 or 30 goods were sold alongside or in the same retail
16 environment as Applicant's CASERO brand products for Class 29 or 30 goods.

17 **RESPONSE:** Opposer objects to the request as being vague and ambiguous in its use of
18 the term "same retail environment." Please clarify. As regards "sold alongside," and based upon
19 current knowledge, Denied.

20 **REQUEST FOR ADMISSION NO. 22:** Admit that Applicant owns incontestable U.S.
21 Registration No. 1,934,691 for CASERO in Class 29.

22 **RESPONSE:** Whether or not Applicant currently owns Reg. No. 1934691 is solely
23 within the knowledge of Applicant. Opposer lacks knowledge or information sufficient to enable
24 it to admit or deny the request.

25 **REQUEST FOR ADMISSION NO. 23:** Admit that Opposer has not objected to Registration
26 No. 1,934,691 for CASERO for goods in Class 29.

27 **RESPONSE:** Goya objects to the request as being misleading and inaccurate in nature.

1 consumer confusion, mistake, or association between Applicant or its CASERO products and
2 Opposer and its CASERA products.

3 **RESPONSE:** Goya objects to the request as being vague and ambiguous in that
4 Respondent does not define what it means by "its CASERO products." Please clarify. Opposer
5 admits that it is currently unaware of any actual consumer confusion, mistake or association
6 between Applicant and Goya and Goya's CASERA products.

7 **REQUEST FOR ADMISSION NO. 35:** Admit that Opposer is unaware of any actual
8 consumer confusion, mistake, or association between Applicant or its CASERA products and
9 Opposer and its CASERITA products.

10 **RESPONSE:** Applicant does not define what it means by "its CASERA products."
11 Opposer interprets the request to refer to Applicant and Applicant's CASERA products which
12 are the subject of the ITU application in issue in this proceeding. Based upon the foregoing
13 interpretation: Admitted.

14 **REQUEST FOR ADMISSION NO. 36:** Admit that Opposer is unaware of any actual
15 consumer confusion, mistake, or association between Applicant or its CASERO products and
16 Opposer and its CASERITA products.

17 **RESPONSE:** Goya objects to the request as being vague and ambiguous in that
18 Respondent does not define what it means by "its CASERO products." Please clarify. Opposer
19 admits that it is currently unaware of any actual consumer confusion, mistake or association
20 between Applicant and Goya and Goya's CASERITA products.

21
22 **AS TO OBJECTIONS:**

23
24 

25 John M. Rannells
26 BAKER AND RANNELLS PA
27 Attorneys for Opposer
28

1
2 **AS TO RESPONSES:**

3
4 I, Conrad Colon, Vice President of Goya Foods, Inc., have reviewed the responses set
5 forth above and declare this 6th day of January, 2015, that they are true and correct to the best of
6 my knowledge and my review of corporate records.

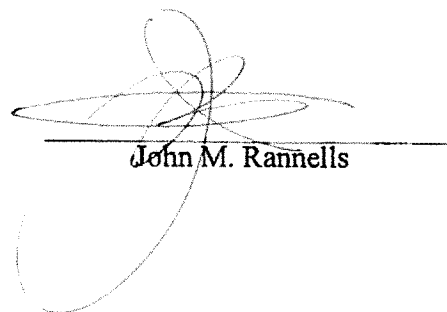
7
8 

9
10 Conrad Colon

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that a true and correct copy of Opposer's Responses and Objections to
13 Applicant's First Request for Admissions, in re *Goya Foods, Inc. v. Marquez Brothers*
14 *International, Inc.*, Opposition No. 91208141, was forwarded by first class postage prepaid mail
15 by depositing the same with the U.S. Postal Service on this 7th day of January, 2015 to
16 Applicant's Attorney at the following address:

17 Gregory N. Owen, Esq.
18 Owen, Wickersham & Erickson
19 455 Market Street, Suite 1910
20 San Francisco, CA 94105

21 
22
23
24
25
26
27
28

John M. Rannells

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---------------------------------|---|--------------------------|
| -----X | | |
| GOYA FOODS, INC. | : | Opposition No.: 91208141 |
| | : | |
| Opposer, | : | |
| | : | |
| v. | : | |
| | : | Mark: CASERA |
| MARQUEZ BROTHERS INTERNATIONAL, | : | Ser. No. 85430918 |
| INC. | : | |
| | : | |
| Applicant. | : | |
| | : | |
| -----X | | |

**DECLARATION OF JOHN M. RANNELLS
IN SUPPORT OF OPPOSER’S MOTION FOR LEAVE TO AMEND THE NOTICE OF
OPPOSITION**

EXHIBIT “3(a)”

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3 In the matter of Trademark Application:

4 Serial No.: 85/430918
5 Filed: September 23, 2011
6 Mark: CASERA

7 GOYA FOODS, INC.

8 Opposer,

9 v.

10 MARQUEZ BROTHERS
11 INTERNATIONAL, INC.

 Applicant.

Opposition No. 91208141

OPPOSER'S RESPONSE AND
OBJECTIONS TO APPLICANT'S FIRST
SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS

12 **OPPOSER'S RESPONSES AND OBJECTIONS**
13 **TO APPLICANT'S REQUEST FOR DOCUMENTS AND THINGS**

14
15 Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 33 and 34 of
16 the Federal Rules of Civil Procedure, Opposer, Goya Foods, Inc., responds to Applicant's
17 Requests for Production of Documents and Things as follows:

18 Preliminary Statement

19 Each of the responses that follow, and every part thereof, are based upon and
20 reflect the knowledge, information or belief of Opposer at the present state of this proceeding.
21 Accordingly, Opposer reserves the right, without assuming the obligation, to supplement or
22 amend these responses to reflect such other knowledge, information or belief which it may
23 hereafter acquire or discover.

24
25 A. **GENERAL OBJECTIONS**

1 The following general objections are incorporated by reference in Opposer's response to
2 each and every Document Request below.

3 1. The specific responses set forth below and any documents and/or things produced are
4 for the purposes of discovery only, and Opposer neither waives nor intends to waive, but
5 expressly reserves, any and all objections it may have to the relevance, competence, materiality,
6 admission, admissibility or use at trial of any information, document or thing produced,
7 identified or referred to herein, or to the introduction of any evidence at trial relating to the
8 subjects, documents or things covered by such response or production.
9

10 2. Opposer expressly reserves its right to rely, at any time including trial, upon
11 subsequently discovered information and/or documents or things, or information, documents or
12 things omitted from the specific response set forth below or as part of production, as a result of
13 mistake, oversight or inadvertences.
14

15 3. The specific responses set forth below are based upon Opposer's interpretation of
16 the language used in the Document Requests, and Opposer reserves its right to amend or to
17 supplement its response in the event Applicant asserts an interpretation that differs from
18 Opposer's interpretation.
19

20 4. By making these responses, Opposer does not concede it is in possession of any
21 information, document or thing responsive to any particular Document Request or that any
22 response given or document or thing produced is relevant to this action.

23 5. Opposer's failure to object to a particular Document Request is not, and shall not
24 be construed as, an admission of the relevance, or admissibility into evidence, of any
25 information, document or thing, nor does it constitute a representation that any such information,
26 document or thing in fact exists.
27

6. Because Opposer may not have discovered all the information, documents or things that are possibly within the scope of the Document Requests, Opposer expressly reserves its right to amend or to supplement these Responses and Objections with any additional information, document or thing that emerges through discovery or otherwise.

7. Opposer objects to the Document Requests to the extent that they require the production of documents or things protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege or any other applicable privilege or immunity. Opposer responds to the Document Requests on the condition that the inadvertent response or production regarding information, documents or things covered by such privilege, rule, doctrine, or immunity does not waive any of Opposer's rights to assert such privilege, rule, doctrine, or immunity and the Opposer may withdraw and request the return of any such response, document or thing inadvertently made or produced as soon as identified.

8. Opposer objects to the Document Requests to the extent that they seek proprietary, sensitive, or confidential commercial information or information made confidential by law or any agreement or that reflects trade secrets. Opposer responds to the Document Requests on the condition that the inadvertent responses or production of documents or things regarding any proprietary, sensitive, or confidential information, document or thing does not waive any of Opposer's rights and that Opposer may withdraw and request the return of any such response, document or thing inadvertently made as soon as identified.

9. Opposer objects to the Document Requests to the extent that they seek information, documents or things that are not relevant to the subject matter of this action or reasonably calculated to lead to the discovery of admissible evidence.

1 10. Opposer objects to the Document Requests to the extent that they are vague,
2 ambiguous and overbroad and therefore not susceptible to a response as propounded.

3
4 11. Opposer objects to the Document Requests to the extent that they exceed the
5 requirements of the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

6 12. Opposer objects to the Document Requests to the extent that they require Opposer
7 to undertake any investigation to ascertain information, documents or things not presently within
8 its possession, custody or control on the grounds of undue burden and because information,
9 documents and things from other sources are equally available to Applicant.

10
11 13. Opposer objects to the Document Requests to the extent that they require Opposer
12 to undertake such an extensive review that such Document Requests are unduly burdensome and
13 harassing.

14 **14. Opposer's only obligation pursuant to Rule 2.120(d) of the Trademark Rules of**
15 **Practice and Rule 34(b) of the Federal Rules of Civil Procedure is to produce documents**
16 **and things where they are normally kept during the normal course of business. For the**
17 **most part, those documents and things are kept at the offices of Goya Foods, Inc. at 350**
18 **County Rd., Jersey City, New Jersey 07307 or at Goya's Puerto Rico offices in San Juan**
19 **and may be inspected and copied where kept upon proper notice at a mutually convenient**
20 **date and time.**

21
22 15. Opposer objects to Applicant's definition of "Goya Foods, Inc.," "Goya," "you,"
23 "your," and "Opposer" to the extent it includes all "directors, officers, employees, agents and
24 attorneys and each person acting on its behalf or under its control" as being overly broad and
25 unduly burdensome to comply with. Opposer is under no obligation to conduct such an intrusive
26 and overly burdensome search for information or documents and is only obligated to produce

1 information and documents under its possession or control. Opposer responds on behalf of Goya
2 Foods, Inc.

3 16. Opposer objects to Applicant's definition of "Applicant" as over-burdensome, vague,
4 ambiguous. Opposer has no way of knowing who is meant by Marquez's predecessors or
5 successors in interest, or any of its related companies, licensees, subsidiaries and divisions, and
6 including individually or collectively, its partners, directors, employees, agents, attorneys or
7 representatives. **Please clarify and provide a list.**

9 17. Opposer objects to Applicant's definition of "identify," "identity," and "identify all
10 facts" as being over broad and unduly burdensome to comply with.

11 18. Opposer objects to Applicant's Instruction regarding claims of privilege as being
12 over broad and unduly burdensome to comply with.

13 All the responses hereinafter set forth are subject to all the above Objections all of which
14 shall be deemed incorporated into each individual response given below.

16 DOCUMENT REQUESTS

17 **REQUEST NO. 1:** All documents identified by Opposer in response to Applicant's First Set of
18 Interrogatories to Opposer served contemporaneously herewith.

19 **RESPONSE:** Opposer was not requested to identify documents in response to
20 Applicant's First Set of Interrogatories and accordingly did not identify any documents.

21 **REQUEST NO. 2:** Each document consulted, and/or which was referred to or used in any way
22 in connection with the preparation of Opposer's Answers to Applicant's First Set of Requests for
23 Admissions or Opposer's Answers to Applicant's First Set of Interrogatories.

24 **RESPONSE:** Subject to Opposer's General Objections, non-privileged documents will
25 be made available for inspection and copying at mutually convenient dates and times.

1
2
3
4 **REQUEST NO. 3:** All documents and things relating or referring to any surveys, polls, studies,
5 and/or consumer testing, whether formal or informal, that Opposer has commenced, completed,
6 commissioned, has access to, or will rely upon regarding the subject of a likelihood of confusion
7 between the Opposed Mark and any of Opposer's CASERA or CASERITA marks.

8
9 **RESPONSE:** As of the date of this response: None.

10
11 **REQUEST NO. 4:** All documents that Opposer contends support Opposer's allegations in the
12 Notice of Opposition that the Opposed Mark is likely to cause confusion with any of Opposer's
13 CASERA or CASERITA marks.

14 **RESPONSE:** Opposer objects to the request as being absurdly over broad and unduly
15 burdensome to comply with. The Request violates Rule 34(b)(1)(A) F.R.Civ.P. which states that
16 a request "must describe with reasonable particularity each item or category of items to be
17 inspected."

18 **REQUEST NO. 5:** A sample, or a copy if a sample is unavailable, of each item of trademark
19 and/or service mark use (*i.e.*, packaging material, wrapper, label, printed container, sign, poster,
20 bag, *etc.*) of the designation "CASERA" used or proposed for use in the United States in
21 connection with each of Opposer's goods for each of the last five years to the present.

22 **RESPONSE:** Subject to Opposer's General Objections, samples or copies of the same
23 be made available for inspection and copying at mutually convenient dates and times.

24 **REQUEST NO. 6:** A sample, or a copy if a sample is unavailable, of each item of trademark
25 and/or service mark use (*i.e.*, packaging material, wrapper, label, printed container, sign, poster,
26 bag, *etc.*) of the designation "CASERITA" used or proposed for use in the United States in
27 connection with each of Opposer's goods for each of the last five years to the present.

28 **RESPONSE:** Subject to Opposer's General Objections, samples or copies of the same
be made available for inspection and copying at mutually convenient dates and times.

1
2 **REQUEST NO. 7:** Representative documents evidencing the dates of first use in commerce for
3 each of Opposer's CASERA brand goods.

4 **RESPONSE:** Subject to Opposer's General Objections, non-privileged documents will
5 be made available for inspection and copying at mutually convenient dates and times.

6 **REQUEST NO. 8:** Representative documents evidencing the dates of first use in commerce for
7 each of Opposer's CASERITA brand goods.

8 **RESPONSE:** Subject to Opposer's General Objections, non-privileged documents will
9 be made available for inspection and copying at mutually convenient dates and times.

10 **REQUEST NO. 9:** Representative documents which evidence, demonstrate, or show the
11 channels of trade through which Opposer promotes or advertises or plans to promote or advertise
12 goods in connection with CASERA.

13 **RESPONSE:** Subject to Opposer's General Objections, non-privileged documents will
14 be made available for inspection and copying at mutually convenient dates and times.

15 **REQUEST NO. 10:** Representative documents which evidence, demonstrate, or show the
16 channels of trade through which Opposer promotes or advertises or plans to promote or advertise
17 goods in connection with CASERITA.

18 **RESPONSE:** Subject to Opposer's General Objections, non-privileged documents will
19 be made available for inspection and copying at mutually convenient dates and times.

20 **REQUEST NO. 11:** Representative documents which evidence, demonstrate, or show the
21 grocery stores through which the Opposer's CASERA goods have been sold to consumers.

22 **RESPONSE:** Goya objects to the request as being overly broad, unduly burdensome and
23 overly intrusive and as being the equivalent of asking for a full customer list. You are referred to
24 *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671 (TTAB
25 1988), and Trademark Rule 414(3).
26
27

1 typical and target consumers of Opposer's products featuring the mark CASERITA, including
2 but not limited to consumer surveys, customer profiles, demographic studies, quantitative and
3 qualitative analyses, focus groups, and any and all other marketing studies.

4 **RESPONSE:** Opposer has not located any documents (i.e., no "consumer surveys,
5 customer profiles, demographic studies, quantitative and qualitative analyses, focus groups, and
6 any and all other marketing studies" concerning "target consumers" of Opposer's CASERA
7 brand products) responsive to the request.

8 **REQUEST NO. 16:** All documents evidencing each usage known to Opposer of any present or
9 former third-party use of any name, mark, or term comprised in whole or in part of CASERA or
10 any variation thereof (including without limitation CASERO or CASERITA) used in connection
11 with Class 29 goods.

12 **RESPONSE:** Opposer has not located any documents responsive to this request.

13 **REQUEST NO. 17:** All documents evidencing each usage known to Opposer of any present or
14 former third-party use of any name, mark, or term comprised in whole or in part of CASERA or
15 any variation thereof (including without limitation CASERO or CASERITA) used in connection
16 with Class 30 goods.

17 **RESPONSE:** Opposer is aware of Ole Mexican's application which was opposed by
18 Opposer. To Opposer's knowledge, Ole Mexican does not currently use the term CASERA on
19 product. Documents pertaining to the referenced opposition proceeding are publicly available on
20 the TTAB database. *See*, Opp. No. 91198986.

21 **REQUEST NO. 18:** All documents evidencing that the goods of Applicant and Opposer are
22 substantially related in part and generally related in part.

23 **RESPONSE:** To the extent that the request seeks documents generated by Opposer's
24 attorney research (and results and proceeds of research) for this case, Opposer objects to the
25 request as being violative of the attorney work-product privilege. Subject to and without waiver
26 of the foregoing objection and without waiver of Opposer's General Objections, relevant
27 representative, non-privileged documents will be made available for inspection and copying at

1 Opposer's response to Applicant's interrogatory no. 13 are all TTAB cases. The docket for said
2 cases is publicly available to Applicant on the TTAB database.

3
4 **REQUEST NO. 23:** All documents which refer or relate to, or comment upon any instances of
5 actual or possible confusion, mistake, deception or association of any kind between Applicant or
6 its CASERA or CASERO brand products and Opposer and its CASERA or CASERITA brand
7 products.

8 **RESPONSE:** As of the date of this response, Opposer has not located any documents
9 responsive to the request.

10
11 

12 John M. Rannells
13 BAKER AND RANNELLS PA
14 Attorneys for Opposer

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that a true and correct copy of Opposer's Responses and Objections to
17 Applicant's First Set of Requests for Documents, in re *Goya Foods, Inc. v. Marquez Brothers*
18 *International, Inc.*, Opposition No. 91208141, was forwarded by first class postage prepaid mail
19 by depositing the same with the U.S. Postal Service on this ____ day of December, 2014 to
20 Applicant's Attorney at the following address:

21 Gregory N. Owen, Esq.
22 Owen, Wickersham & Erickson
23 455 Market Street, Suite 1910
24 San Francisco, CA 94105

25 
26 John M. Rannells
27
28

| | |
|---------------------------------|----------------------------|
| -----X | |
| GOYA FOODS, INC. | : Opposition No.: 91208141 |
| | : |
| Opposer, | : |
| v. | : |
| | : Mark: CASERA |
| MARQUEZ BROTHERS INTERNATIONAL, | : Ser. No. 85430918 |
| INC. | : |
| | : |
| Applicant. | : |
| | : |
| -----X | |

EXHIBIT “3(b)”

In the matter of Trademark Application:

Serial No.: 85/430918
Filed: September 23, 2011
Mark: CASERA

GOYA FOODS, INC.

Opposer,

V.

MARQUEZ BROTHERS
INTERNATIONAL, INC.

Applicant.

Opposition No. 91208141

OPPOSER'S RESPONSE AND OBJECTIONS TO APPLICANT'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

OPPOSER'S RESPONSES AND OBJECTIONS
TO APPLICANT'S SECOND REQUEST FOR DOCUMENTS AND THINGS

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 33 and 34 of the Federal Rules of Civil Procedure, Opposer, Goya Foods, Inc., responds to Applicant's Second Set of Requests for Production of Documents and Things as follows:

Preliminary Statement

Each of the responses that follow, and every part thereof, are based upon and reflect the knowledge, information or belief of Opposer at the present state of this proceeding. Accordingly, Opposer reserves the right, without assuming the obligation, to supplement or amend these responses to reflect such other knowledge, information or belief which it may hereafter acquire or discover.

A. GENERAL OBJECTIONS

1 The following general objections are incorporated by reference in Opposer's response to
2 each and every Document Request below.

3 1. The specific responses set forth below and any documents and/or things produced are
4 for the purposes of discovery only, and Opposer neither waives nor intends to waive, but
5 expressly reserves, any and all objections it may have to the relevance, competence, materiality,
6 admission, admissibility or use at trial of any information, document or thing produced,
7 identified or referred to herein, or to the introduction of any evidence at trial relating to the
8 subjects, documents or things covered by such response or production.
9

10 2. Opposer expressly reserves its right to rely, at any time including trial, upon
11 subsequently discovered information and/or documents or things, or information, documents or
12 things omitted from the specific response set forth below or as part of production, as a result of
13 mistake, oversight or inadvertences.
14

15 3. The specific responses set forth below are based upon Opposer's interpretation of
16 the language used in the Document Requests, and Opposer reserves its right to amend or to
17 supplement its response in the event Applicant asserts an interpretation that differs from
18 Opposer's interpretation.
19

20 4. By making these responses, Opposer does not concede it is in possession of any
21 information, document or thing responsive to any particular Document Request or that any
22 response given or document or thing produced is relevant to this action.

23 5. Opposer's failure to object to a particular Document Request is not, and shall not
24 be construed as, an admission of the relevance, or admissibility into evidence, of any
25 information, document or thing, nor does it constitute a representation that any such information,
26 document or thing in fact exists.
27

1 Foods, Inc.

2 16. Opposer objects to Applicant's definition of "Applicant" as over-burdensome, vague,
3 ambiguous. Opposer has no way of knowing who is meant by Marquez's predecessors or
4 successors in interest, or any of its related companies, licensees, subsidiaries and divisions, and
5 including individually or collectively, its partners, directors, employees, agents, attorneys or
6 representatives. Please clarify and provide a list.
7

8 17. Opposer objects to Applicant's definition of "identify," "identity," and "identify all
9 facts" as being over broad and unduly burdensome to comply with.

10 18. Opposer objects to Applicant's Instruction regarding claims of privilege as being
11 over broad and unduly burdensome to comply with.

12 All the responses hereinafter set forth are subject to all the above Objections all of which
13 shall be deemed incorporated into each individual response given below.
14

15 **DOCUMENT REQUESTS**

16 **REQUEST NO. 24:** A copy of each advertisement that has appeared in the United States
17 concerning Opposer's products bearing the mark CASERA.

18 **RESPONSE:** Subject to Opposer's General Objections, representative, non-privileged
19 documents will be made available for inspection and copying at mutually convenient dates and
20 times.
21

22 **REQUEST NO. 25:** A copy of each advertisement that has appeared in the United States
23 concerning Opposer's products bearing the mark CASERITA.

24 **RESPONSE:** Subject to Opposer's General Objections, representative, non-privileged
25 documents will be made available for inspection and copying at mutually convenient dates and
26 times.

27 **REQUEST NO. 26:** Documents sufficient to identify all instances of which Opposer is aware
28

1 that any of its products bearing the mark CASERA have been sold alongside or in the same retail
2 store as Applicant's CASERA or CASERO brand products.

3 **RESPONSE:** Opposer has not located any documents responsive to this Request.

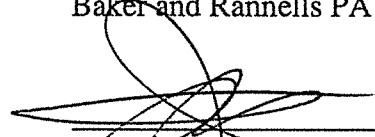
4 **REQUEST NO. 27:** Documents sufficient to identify all instances of which Opposer is aware
5 that any of its products bearing the mark CASERITA have been sold alongside or in the same
6 retail store as Applicant's CASERA or CASERO brand products.

7 **RESPONSE:** Opposer has not located any documents responsive to this request.

8
9
10 Dated: January 28, 2015

Respectfully submitted,

Baker and Rannells PA




John M. Rannells
BAKER AND RANNELLS PA
Attorneys for Opposer

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12
13
14
15
16
17 **CERTIFICATE OF SERVICE**

18 I hereby certify that a true and correct copy of Opposer's Responses and Objections to
19 Applicant's Second Set of Requests for Documents, in re *Goya Foods, Inc. v. Marquez Brothers*
20 *International, Inc.*, Opposition No. 91208141, was forwarded by first class postage prepaid mail
21 by depositing the same with the U.S. Postal Service on this 28th day of January, 2015 to
22 Applicant's Attorney at the following address:

23 Gregory N. Owen, Esq.
24 Owen, Wickersham & Erickson
25 455 Market Street, Suite 1910
26 San Francisco, CA 94105



John M. Rannells